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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.752 OF 2007

Dilip Ganu Patil,
R/o.Bheku, Post Sajgaon,
Tal.Khalapur, Dist. Raigad. Petitioner

versus

1. The State of Maharashtra.

2. Anant Nare, Presiding Officer
and Tahsildar, Tal.Khalapur,
District Raigad.

3. Smt.Meenakshi Gajanan Thakekar,
Sarpanch, Gram Panchayat Sajgaon,
Tal.Khalapur, Dist.Raigad.

4. Bhau Gharu Gaikwad,
R/o.Sajgaon, Tal.Khalapur,
District Raigad.

5. Anil Shriram Deshmukh,
R/o.Sajgaon, Tal.Khalapur,
District Raigad.

6. Chintaman Ramchandra Chavan,
R/o.Sajgaon, Tal.Khalapur,
District Raigad.

7. Dattatreya Pandurang Puri,
R/o.Sajgaon, Tal.Khalapur,
District Raigad.

8. Smt.Baby Bhagwan Patil,
R/o.Sajgaon, Tal.Khalapur,
District Raigad.

9. Smt.Sharada Pandurang Mundhe,
R/o.Sajgaon, Tal.Khalapur,
District Raigad. Respondents

Mr.K.N.Dhuldhwaj for petitioners.

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Mr.Manoj Kadam i/by Pratap Patil for respondents 4 to 9.

CORAM : A.S.OKA, J.

DATE : 07th February 2007

PC :

1. Submissions of learned advocates for the parties were heard on the last date. By this petition under Article 227 of Constitution of India, the petitioner has challenged the judgement and order dated 12th December 2006 passed by the learned Additional Commissioner, Konkan Division, Mumbai by which the appeal preferred by some of the respondents herein, was allowed and Motion of No Confidence passed against the petitioner was upheld.

2. The petitioner was elected as Up-Sarpanch of Village Sajgaon, Tal. Khalapur, District Raigad. On 6th September 2006 the second respondent gave a notice of meeting to consider the no confidence motion against the petitioner. Said notice is dated 6th September 2006. The date of meeting mentioned in the said notice for holding a meeting of Village Panchayat to consider the no confidence motion was stated as 12th August 2006. On 9th September 2006, another notice was issued

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by the second respondent stating that the meeting was to be held on 12th September 2006. According to the case of the petitioner, he did not receive the said notice. A third notice dated 10th September 2006 was issued by the second respondent. The said notice was by way of Corrigendum to the first notice. It was stated therein that in the first notice, due to typographical error, the date of meeting was recorded as 12th August 2006 and in fact the said date should be read as 12th September 2006. According to the case of the second respondent, the third notice dated 10th September 2006 was served to the petitioner by affixing. The case of the petitioner is that though he was not aware that the meeting was scheduled to be held on 12th September 2006, on that day, he was accidentally present in the office of the Village Panchayat. When he found that a meeting was being held, he attended the meeting and submitted a representation in writing against the no confidence motion. The no confidence motion was declared as carried, as six members out of eight who were present voted in favour of the motion.

3. The petitioner moved the Collector u/s 35 of the Bombay Village Panchayats Act, 1958

(hereinafter referred to as "the said Act"). The Collector held that the no confidence motion passed on 12th September 2006 was illegal. Some of the respondents challenged the said order by preferring an appeal before the learned Additional Commissioner, Konkan Division, Mumbai. The said appeal has been allowed by the judgement and order, which is impugned in this petition, and the motion of no confidence passed against the petitioner has been held to be valid.

4. The learned advocate for the petitioner placed reliance on a decision of the Division Bench in the case of Shri Ashok Mehta Vs. State of Maharashtra and others reported in (2000)(2)-Bom.C.R.-724 as well as a decision of a learned Single Judge of this Court in the case of Indubai Khairnar Vs. State of Maharashtra and others reported in (2003)(2)-Bom.C.R.-239. He submitted that as there was no proper service of service of notice as required by the provisions of the Bombay Village Panchayats Sarpanch and Up-Sarpanch (No Confidence Motion) Rules, 1975 read with Bombay Village Panchayat Meeting Rules, 1959, the proceedings of the meeting were vitiated. He submitted that in the only notice received by the petitioner, the date of meeting

was mentioned as 12th August 2006. He, therefore, submitted that the learned Additional Commissioner has committed an error in allowing the appeal. The learned counsel appearing for the respondent nos.4 to 9 placed reliance on the decision of the learned Single Judge of this Court in the case of Smt.Yamunabai Laxman Chavan and others Vs. Smt.Sarubai Tukaram Jadhav reported in (2002)(3)-All.M.R.-93 and submitted that no interference is called for.

5. I have considered the submissions. There is no dispute about the service of first notice dated 6th September 2006. In the said notice it is stated that the meeting will be held on 12th August 2006 to consider the motion of no confidence submitted by six members of the Village Panchayat. The record shows that the third notice dated 10th September 2006 was served by affixing. The said notice is in the form of a Corrigendum which records that there is a typographical error in the earlier notice and the date of meeting shall be read as 12th September 2006.

6. It is pertinent to note that the minutes of the meeting show that the petitioner was very

much present in the meeting. The fact that the petitioner was present in the meeting, is not disputed by the learned advocate for the petitioner. The minutes of the meeting disclose that after the notice of no confidence motion was read in the meeting, the petitioner was allowed to address the meeting on the motion of no confidence. He addressed the meeting. Out of eight members present in the meeting six voted in favour of the motion of no confidence. Thus, the motion of no confidence was passed by majority.

7. In the case before the Division Bench, in the matter of Ashok Krishnakant Mehta (supra), the Division Bench found that no confidence motion was carried out without allowing the members to speak and that is the reason why the Division Bench held that the meeting was not legal. In the present case that is not the allegation made by the petitioner. The decision in the case of Indubai Khairnar (supra) has no application in the present case as in the representation in writing submitted by the petitioner in the meeting, he has recorded that he received the notice of no confidence motion on 8th September 2006 and he attended the meeting. A reference will have to be made to the decision of another

learned Single Judge of this Court in the case of Smt.Yamunabai Laxman Chavan (supra). The learned Single Judge in the said case has dealt with the relevant rules regarding service of notice. The learned Single Judge held that a motion of no confidence does not partake of a punitive character nor is it based on charges of misconduct which have to be proved. He held that the motion of no confidence is the fundamental expression of the collective will of members of elected body that they lack confidence in one of their own. Coming back to the present case, the present petitioner had admittedly received the requisition submitted by the members. He was present in the meeting and he was allowed to address on the subject of no confidence. He also submitted a representation in writing against the motion. If these are the undisputed facts of the case, it is very difficult to find fault with the impugned order passed by the learned Additional Commissioner. The motion against the petitioner has been carried by a large majority as six out of eight members present in the meeting voted in favour of the motion of no confidence.

8. No case is made out for interference. Petition is rejected.

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(A.S.OKA, J.)